

**INDIVIDUAL MOTION PRACTICES OF
JUDGE ARTHUR D. SPATT**

United States District Court
1020 Federal Plaza
P.O. Box 9014
Central Islip, New York 11722

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THESE INDIVIDUAL RULES WILL BE IN EFFECT AS OF JANUARY 1, 2006.

I. COMMUNICATIONS WITH CHAMBERS

A. Delivery. All documents in civil and criminal actions, including motions, letters and stipulations, shall be filed via electronic case filing (ECF). Hard copies of all papers filed electronically must be provided to Chambers. All such papers must be clearly marked "Courtesy Copy," and indicate that the original was filed by ECF. For more information regarding ECF see IV(A) infra. All courtesy copies should be mailed to the Honorable Arthur D. Spatt, United States District Judge, P.O. Box 9014, Central Islip, New York 11722-9014, or delivered to the Clerk's Office. No courtesy copies should be hand delivered to chambers.

B. Letters. Except as provided below, communications with chambers shall be by letter with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

C. Telephone Calls. Counsel are urged to communicate by letter whenever possible. All calls concerning the scheduling of matters should be made to Mary Ellen Schaffner, Deputy Clerk, at (631) 712-5625. For questions concerning procedure, please refer to the Federal Rules of Civil or Criminal Procedure, the Local Rules of the Eastern District of New

York, and these Individual Rules. Law Clerks and the Deputy Court Clerk cannot give legal or procedural advice. Ordinarily, it will not be necessary or appropriate to refer, on the trial record, or in open court, to oral discussions with chambers staff.

D. Fax Transmissions. Faxes to chambers will not be accepted unless the communication is of an urgent nature and prior permission to fax the document has been obtained from chambers staff.

E. Internet. Other than electronic filing, no communication with the Court may take place through any aspect of the internet such as e-mail.

F. Requests for Extensions of Time. No extensions of time will be granted over the phone. Instead, a written request must be mailed or faxed, see Rule I(D) supra, to chambers. Please note that prior to a request for an extension, the parties must contact their adversaries to determine whether they assent to the extension. The written requests must contain the following information: (i) the originally scheduled date; (ii) the number of previous requests for adjournment or extensions by all parties in the action; (iii) whether these previous requests, if any, were granted or denied; and (iv) whether the adversary consents and, if not, the reason they provided for declining to assent. NOTE: All requests for an extension of time to answer or otherwise respond to a complaint should be addressed in writing to the District Judge.

G. Ex Parte Correspondence Prohibited. All correspondence with the Court must include a certificate of service, cc:, or other indication that a copy of the correspondence was served on all other parties in the case. The Court will not consider any correspondence or documents submitted ex parte.

II. FORM OF PAPERS

A. Full Caption Required. All papers filed with the Court, other than letter motions, shall set forth the full caption of the case and the docket number on the front page. The use of “et al.” or other shortened caption forms is not permitted.

B. Amended Caption Required on Partial Dismissal. Any stipulation or uncontested application which seeks to dismiss one or more parties from the case but which does not dispose of the entire case, shall include a provision setting forth an amended caption reflecting the parties remaining in the case following the dismissal.

C. Courtesy Copies of Motions Required. All parties filing formal motions with the Clerk of the Court shall also file a courtesy copy of all papers for use by chambers.

D. Non-conforming Papers. Papers submitted to the Court in violation of the above rules will not be docketed and will be returned to the sender or disregarded.

E. Self-Addressed Envelope. All applications to be “So Ordered” shall include a self-addressed envelope for the return of the signed order. If no self-addressed envelope is provided, notice will be provided only via the ECF system.

III. CONFERENCES

A. Time and Place. Conferences will usually be held in chambers, Room 1024, at 9:00 a.m., unless otherwise directed by the Court. All parties shall appear at the Central Islip Courthouse promptly at the scheduled hour and wait in Courtroom 1020 until called into chambers.

B. Preparation for Conferences. Counsel appearing at conferences should be fully familiar with the case, prepared to discuss all aspects of the case, and be authorized to consummate settlements. In this regard, counsel are expected to be fully familiar with Fed. R. Civ. R. 16 before attending any conferences.

C. Adjournments. Applications for adjournment of conferences or motions must be made in writing and should be directed to Ms. Schaffner. Adjournments shall be granted only upon a showing of good cause. Requests for adjournments of conferences shall be made at least two (2) business days prior to the scheduled conference.

IV. MOTION PRACTICES

A. Electronic case filing (ECF). All documents in civil and criminal actions shall be filed electronically. Hard copies of all papers filed electronically, including motions, letters and stipulations, must be provided to Chambers. All such papers must be clearly marked “Courtesy Copy,” and indicate that the original was filed by ECF. Parties filing voluminous or non-text exhibits shall only file hard copies. If exhibits are not electronically filed, one copy must be clearly marked “Original” and the other marked “Courtesy Copy.” Related papers that are electronically filed should clearly indicate that exhibits have been filed by hard copy. Sealed documents or documents containing sealed/sensitive information should be submitted in hard copy only and be so labeled.

Pro se parties are automatically exempt from mandatory electronic filing. However, parties represented by counsel in pro se cases must file documents electronically and mail a hard copy of the document to the pro se litigant. Requests for exemption from ECF requirements may

be made before the Magistrate Judge assigned to the case. However, no request will be granted until the attorney has registered for ECF and sought ECF training. Questions regarding ECF filing or training should be directed to the Court's docketing department at (631) 712-6010.

B. General Motion Rules. Unless specifically discussed herein, Rule 6 of the Federal Rules of Civil Procedure, Local Civil Rule 6.1, and Local Criminal Rule 12.1, shall govern the service and filing of motion papers on all civil motions, petitions, applications and exceptions other than motions for: (i) summary judgment, (ii) admission pro hac vice, (iii) motions in conjunction with bankruptcy and social security appeals, (iv) motions objecting from a Magistrate Judge's Report and Recommendation, and (v) petitions for writs of habeas corpus.

(i) **Memoranda of law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. All memoranda of law shall be produced in a font of 12 (twelve) or higher and shall have one inch margins on all sides. Memoranda of 10 pages or more shall contain a table of contents. Memoranda of law shall not contain footnotes. All citations to cases and other authority shall be set forth in the body of the text.

(ii) **Return date, oral argument.** The notice of motion need not contain a return date. Parties may request oral argument by letter at the time their motion papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

(iii) **Cross-motions.** Should the non-movant seek to make a cross-motion, this cross-motion must follow the same procedures as utilized for making the motion.

(iv) ***Pre-motion conference not required.*** Except as provided for below with respect to motions for summary judgment or unless required by law, leave of the Court or a pre-motion conference is not required prior to making a motion.

(v) ***Non-complying motions rejected.*** Motions not in conformity with the rules set forth herein will be returned to the movant undocketed or disregarded.

C. Discovery Motions. Motions made pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall be made in accordance with the Local Civil Rules and the Individual Practices of the presiding United State Magistrate Judge.

D. Motions for Summary Judgment. No motion for summary judgment will be accepted for filing and docketing unless the movant has complied with the following procedures.

(i) ***Exchange of statements pursuant to Local Rule 56.1.*** Any party wishing to make a motion for summary judgment must first serve upon all parties a statement pursuant to Local Civil Rule 56.1 (“Rule 56.1”) setting forth those items on which there is no material issue of fact. Each statement of material fact must be followed by a citation to evidence which would be admissible, as set forth and required by Rule 56(e) of the Federal Rules of Civil Procedure.

All parties receiving such a Rule 56 statement and wishing to oppose the motion must serve on the movant, within seven days of receiving the movant's Rule 56.1 statement, an original and two copies of a counter-statement pursuant to Rule 56 setting forth those items on which there exists a genuine issue of material fact. The counter-statement should specifically admit or dispute each individual allegation in the movant’s Rule 56.1 statement before asserting any additional facts in dispute, and each statement of disputed material fact must be followed by

a citation to supporting evidence which would be admissible. Exhibits shall not be attached to Rule 56.1 statements.

Should the non-movant require additional time to file a Rule 56.1 counter-statement, the parties may agree among themselves to a reasonable extension.

Until the movant requests a pre-motion conference as set forth in the following subsection, Rule 56.1 statements and counter-statements shall not be filed with the Court.

(ii) ***Requesting a pre-motion conference.*** After receiving the counter-statement of the non-movant, should the movant still wish to move for summary judgment, the movant must write to the Court and request a pre-motion conference. In no more than two pages, the letter should briefly state the basis for the anticipated motion. The letter shall also contain a copy of the Rule 56.1 statement and the non-movant's counter-statement. Within seven days of the movant's letter, the non-movant may submit a response letter of no more than two pages, setting forth the nature of the opposition to the motion. The request for a pre-motion conference must be made with the Court prior to any deadline established by the Magistrate Judge for the making of dispositive motions. Exception: A pre-motion conference is not required where any party in the action is appearing *pro-se*.

(iii) ***Making the motion.*** Following the pre-motion conference, if the movant decides to make a motion for summary judgment, the Court will provide a briefing schedule for the parties. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

E. Motions for Admission Pro Hac Vice. All motions for admission pro hac vice should be directed to the United States Magistrate Judge assigned to the case. The motion shall

include a proposed Order. Although there is no need to file a memorandum of law, this motion must comply with the Rules of the Eastern District of New York for admission pro hac vice and must indicate on behalf of which party the attorney is seeking to appear. Should any party object to the motion, opposition papers must be served and filed within five days of the filing of the motion. Reply papers will not be accepted.

F. Bankruptcy Appeals. The Court directs the parties to Bankruptcy Rules 8001 - 8013 regarding the filing deadlines for notices of appeal and submission of briefs, as well as the form and length of briefs. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

G. Social Security Appeals. Both sides shall file motions for judgment on the pleading pursuant to Rule 12(c) within four weeks of the filing of the transcript with the Clerk of the Court. Opposition papers to each motion shall be filed within 20 days of the filing of the motions. Failure to adhere to this rule will result in dismissal of the appeal, without prejudice and with leave to re-file. No extensions will be granted. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

H. Objections from Magistrate Judge Decisions. All objections from Magistrate Judge decisions must be served and filed within ten days from the date of service of the decision, unless otherwise directed by the Magistrate Judge. All papers opposing the objections shall be served and filed within ten (10) days from receiving the objections. A reply may be filed within five days of service of the opposition. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

I. Habeas Corpus Petitions. Upon the filing of a habeas corpus petition, the Court shall issue an order setting forth a schedule for the filing of answer by the Respondent and a reply by the Petitioner. Unless otherwise directed by the Court, any ground for dismissing the petition should be addressed in the Respondent's answer and not in a motion to dismiss. All briefs must comply with the page limits and content rules set forth in the General Motion Practices, Section B(i), above.

IV. DEFAULT JUDGMENTS.

Any plaintiff making a motion for a default judgment shall serve a copy of the motion on the Defendant in default in the manner provided for by Rules 5(b) and (d) of the Federal Rules of Civil Procedure. No default judgment will be granted in the absence of a certificate of service indicating that the application has been served on the Defendant in default. All motions for a default judgment must include a proposed Certificate of the Clerk of the Court noting the default and a proposed default judgment.